IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 432 of 1989
with
CIVIL APPLICATION No.9810 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT RAJYA POLICE INSPECTORASSOCIATION - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MUKUL SINHA for Petitioner(s) : 1 - 4.
MR KAMAL TRIVEDI, Addl.AG with MS SANGITA VISHAN AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/03/2006

ORAL JUDGMENT

1. The petitioners, in all four associations, namely, (1) Gujarat Rajya Police Inspectors' Association (2)Gujarat Rajya Police Sub Inspectors' Association (3) Gujarat Rajya Police Head Constable Mandal and (4) Gujarat Rajya Police Constable Mandal, have filed this petition under Article 226 of the Constitution of India praying for declaration that the show cause notice dated 28.12.1988 issued to the petitioner associations is illegal and contrary to the Act and the Rules and, therefore, requires to be quashed and set aside. The petitioners have also asked for the stay against the respondents restraining them from acting upon the show cause notices dated

28.12.1988 and from taking any action pursuant thereto. The petitioners have also asked for the stay against the respondents from cancelling or withdrawing the recognition of the petitioner associations without giving reasonable opportunity to the associations to show cause against the said purported act.

2. During the pendency of this petition, the respondent has passed an order on 18.3.1989 revoking the recognition of the associations, and, therefore, amendment was made to the petition as well as in the prayer clause. As per the amended prayer, the petitioners have sought for declaration that the impugned orders of revocation dated 18.3.1989 are ex-facie, illegal, unconstitutional and violative of principles of natural justice and, therefore, are null, void and ab-initio and that the associations and their members would suffer

irreparable hardships if the said orders are not stayed. The petitioners have, therefore, prayed for the ad interim relief restraining the respondents from enforcing, implementing, executing or taking any action in pursuance of the impugned orders dated 18.3.1989 and further prayed for the interim relief restraining them from interfering with the activities of the associations and further directing them to permit the associations to work and function according to law and the Constitution.

3. This Court has passed an order on 20.1.1989 and it was observed therein that in the matter of derecognition of the associations in question, decision would not be taken without hearing the associations. In view of the said statement made by the learned counsel appearing on caveat on behalf of the respondent, the matter was adjourned on that day. This Court

has, thereafter, passed further order on 10.11.2000 and it was observed therein that the petitioners have been advised to make an application for recognition of their associations under Rule-8 of the Police Force (Restriction of Rights) Amendment Rules, 1970 made in exercise of the powers conferred by Sub Section (1) of Section-6 of the Police Forces (Restriction of Rights) Act, 1966. The matter was, therefore, adjourned so as to enable the petitioners to make an appropriate application under the above referred Rule-8. The Court has, thereafter, passed further order on 20.4.2001 and it was observed therein that an application for permitting the holding of a meeting for passing a resolution to make an application for recognition was made and that the same was yet not replied. The Court has directed the State Government to make its stand clear on the next date of hearing. Thereafter,

the State Government has rejected the said application on 21.4.2001. Even further application for reconsideration of its decision was also rejected n 9.5.2001.

4. Being aggrieved by the said order the petitioners have filed Civil Application No.9810 of 2001 praying for the direction to the respondent No.2 to permit the applicants to hold the meeting to discuss and pass appropriate resolution for filing the fresh application for recognition. The said Civil Application was ordered to be heard alongwith the main petition.

5. As far as main petition is concerned, it is the case of the petitioners that the petitioners associations are sincerely and bona fide committed to the lawful and constitutional means permissible under the Constitution and

the law for the furtherance of interest of their members. The petitioner associations have never acted and have no intention to act and will never act in any manner which is prejudicial to the Constitution, the law and people's interest. The petitioner associations also keep the discipline of the police force as their highest consideration and do not believe in considering their personal interest above public interest or above discipline. The petitioner associations have so far never acted in any manner which is unconstitutional, unlawful, immoral, improper, unjustified or destructive of discipline or prejudicial to the interest of the people.

6. It is also the case of the petitioner associations that there was wide spread discontent and dis-satisfaction among the members of the police forces in the State of

Gujarat and the petitioner associations were trying to bring about the satisfactory and peaceful resolution of the grievances and problems by negotiating with the Government. The major grievance of the police force was with regard to the pay scales of the 4th Pay Commission of the Government of India. The associations effectively intervened and as a result thereof the compromise was arrived at between the Government and the four petitioner associations. It was specifically mentioned in the compromise that the government would not victimize anybody. Even after the said compromise, the Government did not show readiness and willingness to redress the various grievances of the different classes of members of the police force. Wide discontent and disaffection spread among the members of the police force. The Gujarat Rajya Police Karmachari Sanklan Samiti was also formed

representing the different classes of the police force and it was this Sanklan Samiti which was carrying on negotiations with the government and also made efforts to channelise the discontent of the police force in a peaceful, legal and constitutional manner. Thereafter various incidents happened which led to further tension between the government and the police force. There was also the threat of strike by the police force. A meeting was held at Gandhinagar on 12.7.1988 between the government and the Sanklan Samiti and the government asked for 6 months time for the redressal of the grievances and a peaceful atmosphere was created. However, immediately thereafter the government took a summer-salt and started issuing statements that no compromise has been arrived at and the government has not given any assurance. The associations and its members, therefore, feared

that the government was determined to victimise the leaders and the members of the police force and to take various coercive and repressive measures against the police. Apprehending the large scale repression by the government, a petition was filed in this Court by the petitioner associations alongwith the other officers with a prayer to restrain the government from harassing victimising, dismissing, suspending the officers etc., and ad-interim relief was also granted. Inspite of that the government did not respect the interim stay and hence a contempt petition was filed. As a part of the further repression, the respondent No.2 issued an order dated 23.7.1988 suspending the recognition of the petitioner associations for a period of 3 months. After expiry of the 3 months the respondent No.2 again issued an order dated 19.10.1988 extending the suspension of the recognition of

the associations for a further period of 3 months with effect from 24.10.1988.

7. Dr. Mukul Sinha, learned advocate appearing for the petitioner associations has submitted that a bare reading of the orders passed by the respondent No.2 will show that the recognition of the associations was suspended with the result that the associations could not carry out any of their activities nor the office bearers or other members could do so. Not only this, but if any such activities are conducted they would be illegal. A writ petition being Special Civil Application No.3941 of 1988 was filed challenging the suspension of recognition and ad-interim relief was granted in respect of the properties and premises of the associations. After the suspension of the recognition of the associations, the petitioner associations could not function. Most of the

office bearers were dismissed and many of them were detained under the National Security Act. Various petitions challenging the said order were stated to be pending in this Court.

8. Dr.Sinha further submitted that as a result of the suspension of the recognition the petitioner associations could not function according to their Constitution, no meeting could be held, most of the office bearers were not there and no business could be transacted. He has submitted that all these would be illegal and would subject the persons to criminal proceedings. He has further submitted that the respondent No.2 issued a Memorandum dated 28.12.1988 to all the petitioner associations informing them that the government has decided to cancel the recognition of the associations and asking the petitioner associations to show cause against the same.

As the associations could not continue their activities because of the order of the government, it was legally impossible for the associations and their office bearers to reply effectively to the show cause notices. He has further submitted that inspite of the reply given by the associations to the show cause notices on 17.1.1989 the government has determined to cancel or withdraw the recognition of the associations. Dr.Sinha further submitted that under the Police Forces (Restrictions of Rights) Rules, 1970, a reasonable opportunity is required to be given to the associations before withdrawing or cancelling the recognition. As the respondents have suspended the recognition of the associations, the associations could not function and could not conduct their proceedings. No business could be transacted, no meeting could be held and no decisions could

be taken. Some of the office bearers were dismissed and some were in jail. Under these circumstances, the petitioner associations were made legally disabled from filing their effective reply to the show cause notices.

9. Dr.Sinha further submitted that the show cause notices dated 28.12.1988 were addressed to the petitioner associations whose recognition was under the suspension at the relevant time. The petitioner associations were not in a position to function at all. Not only that its functioning would itself be illegal, but even a calling meeting of the associations would be illegal and the participants in the meeting would be guilty of an offence under the Police Force (Restrictions of Rights) Act, 1966 and the rules thereunder. He has, therefore, submitted that in such a situation, it was legally impossible for the

associations to reply to the show cause notices of 28.12.1988. Moreover, it was only the associations and their competent bodies which could give reply to the show cause notices, but they were not permitted to function and, therefore, the question of giving official replies did not arise. However, certain individuals without any authority under the constitution of the associations replies to the show cause notices.

10. Dr.Sinha has further submitted that show cause notice was issued to the Gujarat Rajya Police Head Constables Mandal and the notices were handed over to Shri Manubhai C. Bhatt. He submitted a representation dated 6.1.1989 to the respondent No.2 stating the condition of the association under suspension and explaining the difficulties which would render it impossible to give replies to the show cause

notices. In response to the notice for oral hearing to the Gujarat Rajya Police Constable Karmachari Mandal, one Mr.Govindsinh Dabhi, Police Constable, Vatva Police Station appeared before the respondent No.2 and submitted an application for giving time of one month for hearing so that the association after following procedure could properly reply. Inspite of this application, he was asked to give a statement and he gave a statement. In the statement, he also explained the difficulties faced by the associations to give reply. He was then asked to state anything on behalf of the City unit. He has further submitted that various replies were filed on behalf of the different associations. It would be obvious that none of the persons to whom the notices for oral hearing were handed over had the authority to speak on behalf of the associations.

11. Dr.Sinha further submitted that after the suspension period of the recognition of the associations came to an end on 23.1.1989 the associations were highly disorganised and could not organise themselves properly. They could not hold meetings of the Executive Committee till the date of oral hearing. It was only on 5.3.1989 that the associations could hold a meeting and submitted a Memorandum to the Governor and the Chief Minister praying for judicial enquiry into the incidents and withdrawal of the dismissal of its office bearers. Even before the revocation of the recognition of the associations, the respondents have created such an atmosphere of fear and panic that none of the members of the associations could act freely and could work in associations. All of them were afraid of reprisals and repressive measures from the

government and the government has already determined not to allow the associations to work. Dr.Sinha has further submitted that the impugned orders of the respondent No.2 are arbitrary, irrational and were passed as a result of non-application of mind and, therefore, violative of Articles 14 and 16 of the Constitution of India and also of the provisions of the Police Forces (Restrictions of Rights) Act, 1966 and the rules framed thereunder and are also mala fide and violative of Article-21 of the Constitution of India and also in breach of the principles of natural justice.

12. Dr.Sinha further submitted that Police Forces (Restrictions of Rights) Act, 1966, the Police Forces (Restrictions of Rights) Rules, 1966, the Police Forces (Restrictions of Rights) Amendment Rules, 1967 and the Police Forces

(Restrictions of Rights) Amendment Rules, 1970, are relevant for deciding the issue raised by the petitioners in this petition.

13. Rule-8 says that members of a police force belonging to the same rank desiring to form an association may by an application apply for the grant of recognition under Clause (b) of Sub Section (1) of Section-3 and such application shall be in writing under the hand of a representative of such association addressed to the Inspector General of Police who shall be the authority to grant, refuse or revoke such recognition. Provided that before refusing or revoking recognition, the association shall be given a reasonable opportunity of making representation against the proposed action. Dr.Sinha therefore submitted that this rule clearly provides for a reasonable opportunity of making representation against the proposed

action to be given to the association. Similarly at the time of hearing of the petition it was stated by the learned Advocate General that in the matter of derecognition of the association in question decision would not be taken without hearing the associations.

14. Dr.Sinha has further submitted that all the petitioner associations' recognitions were suspended from 23.7.1988 to 23.1.1989 i.e for a period of six months permissible under the Rules. During this period of suspension, the associations could not and were not permitted to carry on any activities either individually or through collectively, their office bearers could not work, their meetings could not be held, nobody was in a position to accept any communication from the Government, when the suspension orders were challenged by Special Civil Application No.3941 of 1988, ad-interim

relief was granted to the effect that the respondents were restrained from interfering with the peaceful possession, enjoyment and use of the premises and properties of the associations. Dr.Sinha has further submitted that the associations were and are fully and legally recognised by the government and have always been working in a legal and constitutional manner. Their only duty was to ventilate the grievances of the members. The members of the Police Forces belonging to one of the most exploited groups in the State and their living and working conditions have always remained most deplorable inhuman and unjust. On the one hand, the police force is used by the government and the politicians for their narrow purposes to suppress the people's movements and as a result the police force losses sympathy of the people who would not support their cause. On the other hand, the

State would not agree for the movement of the living and working conditions of the police force. The result is that the members of the police suffered great injustice, inequalities and hardships. Not only this but their grievances would also not be properly considered.

15. Dr.Sinha has further submitted that Rule-9 of the Police Forces (Restrictions of Rights) Amendment Rules, 1970, states about suspension of recognition. It says that the Inspector General of Police may in the interests of the general public or for the maintenance of discipline in the police force and with the prior approval of the Central Government, the State Government or as the case may be the Administrator of the Union territory suspend the recognition granted under Rule-8 for a period not exceeding three months which may be

extended for a further period of 3 months by the Central Government, State Government or as the case may be the Administrator of the Union territory so however that the total period for which such recognition may be suspended shall not, in any case, exceed 6 months. Dr.Sinha has further submitted that this rule clearly provides for suspension of the recognition of the Union if the Inspector General of Police decides to do so in the interest of the general public or for the maintenance of the discipline in the police force. The State Government accordingly exercised this power and suspended the recognition of the associations by an order dated 23.7.1988 for a period of 3 months. This suspension order was allegedly in respect of and because of the allegations of misconduct, indiscipline etc, which were allegedly against them. He has further submitted that the action of the respondents in suspending the

recognition of the associations was a penal action making all activities of the associations illegal and punishable with the imprisonment. This action was, however, an independent action by way of punishment against the Associations for their alleged activities before the date of the orders of suspension.

16. Dr.Sinha further submitted that the impugned order of 18.3.1989 revoking the recognition of the associations are absolutely without any basis and as a result of the clear non-application of mind because firstly for alleged acts of omission and commission before 24.7.1988 the associations were suspended and were adequately punished. Secondly after 24.7.1988 to 23.1.1989 the associations were not working at all and, therefore, could not be held guilty for any activities and thirdly after 23.1.1989 no illegal activity has been

committed by the associations. Dr.Sinha further submitted that the impugned orders are clearly arbitrary, irrational and unreasonable and totally unjustified and are by way of double punishment and also based upon materials which ought not to have been taken into consideration and, therefore, are illegal, null and void.

17. Dr.Sinha further submitted that under Article 33 of the Constitution of India, the Parliament has got powers to curtail or restrict the fundamental rights of the police force and accordingly the Parliament has passed the Police Force (Restriction of Rights) Act, 1966 restricting and regulating certain basic rights of the police force but the said Act has not completely taken away the fundamental rights of the police force i.e, the right to form an association is subject to recognition to be

granted by the authorities but once the recognition is granted, the members of the police force are entitled to avail of those rights and to enjoy them subject to the restrictions imposed by the Act. Similarly with respect to freedom of speech and expression and assembly, the fundamental rights of the police force are only restricted and regulated and are not totally abrogated. Subject to those restrictions and regulations the members of the police force are entitled to enjoy the fundamental rights under the constitution. Under the Act and the Rules, the enjoyment of the fundamental rights by the members of the police force is substantially made to depend upon the recognition of the associations by the authority. It follows, therefore, that in the matter of grant of recognition, the withdrawal of recognition or suspension of recognition, the authority must

strictly comply with the conditions and the norms under which the fundamental rights can be taken away. He has, therefore, submitted that by the impugned order of revocation the fundamental rights of the police force to form association under Article-19 are totally abrogated. He has, therefore, submitted that it is necessary that the impugned orders of revocation must strictly be tested on the touchstone of constitutional requirements, namely, it must be a just decision and such a decision must be taken after following a just, fair and reasonable procedure. The impugned orders of revocation are absolutely unjust, improper and unjustified and passed by way of victimization only and without following the principles of natural justice. Therefore, the impugned orders of the respondent No.2 are clearly violative of Articles 14, 19 and 21 of the Constitution of India and are, therefore,

liable to be quashed and set aside.

18. Dr.Sinha has relied on the decision of Madras High Court **in the case of Tamil Nadu Electricity Board Engineers' Sangam vs Tamil Nadu Electricity Board, reported in 1996 (1) LLN 914**, wherein it is held that the respondent has not given any opportunity to put forth the grievances of the petitioners by conducting an enquiry which will find whether the petitioner-union has indulged in any unlawful activities. There the Court was of the clear view that the withdrawal of the recognition of the petitioner – union without affording the requisite opportunity to the petitioners is bad in law and it is opposed to the principles of natural justice. The Court, therefore, held that the order impugned in the said writ petition was liable to be set aside. The Court further held that admittedly the respondent has granted

recognition to the petitioner-union. When it wants to undo that recognition by derecognising it is incumbent upon the respondent to give opportunity to the petitioner-union and to state valid reasons for derecognition. In other words, the derecognition cannot be done in an arbitrary manner. Therefore, writ petition was allowed and the order impugned withdrawing the recognition granted to the petitioner-union was quashed.

19. As far as Civil Application No.9810 of 2001 is concerned, Dr.Sinha has submitted that the petitioners have originally filed the aforesaid petition challenging the action of the respondents of suspending the recognition of the petitioner associations without giving any fair opportunity of hearing to the associations and have prayed for various reliefs including declaration that the impugned notice dated

28.12.1988, issued to the associations are illegal, null and void. He has further submitted that during the pendency of the petition original respondent No.2 cancelled the recognition by order dated 18.3.1989 and the recognition was revoked of all the four petitioner associations with immediate effect together with all its branches in Gujarat. He has further submitted that the original petitioners had therefore, moved Civil Application No.619 of 1989 and had made certain amendments in the memo of petition including relief clauses in order to challenge the revocation of recognition. Since then the matter was pending for final hearing.

20. Mr.K.B.Trivedi, learned Additional Advocate General, appeared for the respondents and referred to the detailed affidavit in reply as well as affidavit in sur rejoinder filed on

behalf of the respondent No.2. He has submitted that the members of police force are charged with the maintenance of public order. Therefore, the Police Force (Restriction of Rights) Act, No.33 of 1966 and the Police Forces (Restriction of Rights) Rules, 1966 were framed and Police Force (Restriction of Rights) Amendment Rules, 1970 was framed to delineate the restrictions imposed on the rights conferred by Part-III of the Constitution of India in their application to the members of the said force. He has further submitted that this power was conferred on the Parliament by the Constitution under Article 33 of the Constitution of India. The said Act provides for restriction of certain rights referred to by Part-III of the Constitution in their application to the members of forces charged with the maintenance of public order so as to ensuring proper discharge of their duties and

maintenance of discipline amongst them. He has further submitted that Section-3 provides that no members of police force shall without the express sanction of the government or of prescribed authority, (a) be a member or be associated in any way with any trade union, labour union, political association or with any class of trade union, labour union or political association, or (b) be a member of or associated with any other social institution, association or organisation, which is not recognised as part of force of which he is a member or is not a purely social recreational or religious nature or (c) communicate with the papers or publish or cause to be published any book, letter or other documents. He has further submitted that the police force of State of Gujarat are covered under the aforesaid Act. The provisions of Section 6 empowers the Central Government to make rules

to carry out the purposes of the Act. The Central Government in exercise of the said powers have made the said Rules. The provisions of Rule 3 also impose a restriction on the member of police force from participating or addressing any meeting or taking part in any demonstration organised by any body of persons. Proviso to Rule-3 of Clause (c) provides for a meeting in which a member of the police force can participate. The Rule-8 as amended by aforesaid amending Rules provides that a member of police force desiring to form an association may make an application for the grant of recognition under Clause-3 of Sub Section 1 of Section-3 and the Director & Inspector General of Police is the authority to grant, refuse or revoke such recognition after giving a reasonable opportunity of making representation against the proposed action. The Rule-9 provides and

empowers the Director & Inspector General of Police in the interest of general public or for the maintenance of discipline in police force, suspend the recognition granted under Rule-8 and in that behalf for suspension, revocation and for complying with the principle of natural justice, the procedure is provided to issue special notices and/or publish in departmental gazette or bulletin of police force and in such other manners as may be directed by Director & Inspector General of Police from time to time.

21. Mr.Trivedi, in the above background of facts and circumstances, has submitted that the recognitions were granted to the petitioner association by the competent authority. However, the associations, instead of working for the achievement of the avowd object of granting recognition to the associations, under the provisions of Act and Rules, in

contravention of the said provisions by forming unions started indulging in illegal and indisciplined activities like :-

(i) Instigating the members of police force not to fill their option forms.

(ii) Slogan shouting in the office compound of the Commission of Police, threatening to boycott salarities.

(iii) Releasing press statements which were likely to cause disaffection amongst the members of the police force towards the Government.

(iv) Expressing support to the agitation by Nurses.

(v) Resorting to stage Dharna in front of the residence of the then Hon'ble Chief Minister.

(vi) Declaring complete support to the agitation by the Gujarat Rajya Revenue Karmachari Mahamandal.

(vii) Deciding to go on strike on Ratha Yatra

day on 15.7.1988 if demands of police union were not met.

(viii) Threatening to give call for strike if the pay scales of wireless staff were not revised as per their demand.

(ix) Giving false and highly distorted version of the incident relating to the background of the police strike in July, 1988 and

(x) Instigating substantial number of police force at various parts of the State to proceed on illegal strike from 24.7.1988 to 29.7.1988 which compelled the authorities to deploy para-military forces and the army to maintain law and order situation in the State.

22. Mr.Trivedi has further submitted that the aforesaid activities were unbecoming of members of responsible police force and thereby caused a grave situation and problems for maintenance of not only law and order but also breached the

public order. He has, therefore, submitted that initially the said recognition was suspended for a period of three months vide order dated 23.7.1988 and with the sanction of the government, the said suspension order was extended for a further period of three months. Thereafter, a show cause notice was issued on 28.12.1988 calling upon the association as to why the recognition granted to it should not be cancelled for the reasons mentioned therein.

23. Mr.Trivedi has further submitted that after giving ample and reasonable opportunity of making representation against the proposed action to the petitioners in the matter, the respondent No.2 passed an order dated 18.3.1989 revoking the recognition with immediate effect. The respondent No.2 took the decision for revoking the recognition of the associations for the reasons mentioned in the order by

exercising the power conferred by the Act and the Rules in compliance with the provisions of the aforesaid Act and Rules. He has, therefore, submitted that no right much less the fundamental rights of the petitioners are violated by the respondent No.2. He has, therefore, submitted that the present petition deserves to be dismissed without granting any relief in favour of the petitioners particularly when the right guaranteed by Article 19(1)(c) to form associations does not involve a guaranteed right to recognition. He has further submitted that alongwith the derecognition of the police association, the Government have simultaneously constituted alternative forum for the State police personnel to seek redressel of their grievances by constituting Grievance Redressel Committees at the district levels and and state level. As the State has already taken proper care for the

welfare and redressel of the grievances of State police personnel, the present petition does not sustain and the same deserves to be dismissed without granting any relief in favour of the petitioner.

24. Mr.Trivedi, has submitted that the police force which is arm of the State charged with the duty of ensuring and maintaining public order. Efficiency of their services and its utility in achieving the purpose for which it is formed is very important. No association has got any right to instigate and induce the members of that service from performing their functions and being available of the police force to the State as a disciplined body. Any breach in the discipline by its members must necessarily be a threat to public order and tranquility. If the police force itself were indisciplined, they could hardly serve as an

instrument for the maintenance of public order or function properly as machinery through which order could be maintained amongst the general public. So any attempt on the part of the association to induce indiscipline among the members of police force cannot be permitted because the purpose of granting recognition to the association is not for such purpose. He has, therefore, submitted that looking to the reasons mentioned in the show cause notice and the order of revocation, the contentions raised by the petitioners are not true, correct and proper and hence the same are not tenable at law.

25. Mr.Trivedi has further submitted that even after signing the agreement as narrated in the petition, the illegal and indisciplined activities of the association unbefitting to the police force were continued and, therefore,

the aforesaid show cause notice was issued to the association for the reasons mentioned therein. He has, therefore, submitted that question of victimising anybody does not arise. He has further submitted that the Gujarat Rajya Police Karmachari Sankalan Samiti was formed before the said compromise and also continued after the said compromise. It is not true, correct and proper to say that the Samiti made efforts to channelise the discontent of the police force in a peaceful, legal and constitutional manner. On the contrary, the Samiti consisting of the petitioner associations indulged in activities which were unbefitting to the police force, which were very much indisciplined and illegal and hence the allegations made in the petition are not true.

26. Mr.Trivedi has further submitted that taking

into consideration the prevailing grave situation and circumstances prevailing at the relevant period of time, the show cause notice was issued for the reasons mentioned therein to afford reasonable opportunity of making representation to the associations and reply to the same was made by the associations and after the said reply order of revocation was passed revoking the recognition granted to the petitioner associations. He has, therefore, submitted that an order passed is absolutely legal and proper because right to form an association does not involve a guaranteed right to recognition.

27.Mr.Trivedi has further submitted that the competent authority had passed order in compliance with the provision of the Act and Rules and also provisions of Constitution of India. He has further submitted that on the

basis of facts found on record, it is evident that the authorities have taken action of resorting to the revocation of recognition as the public order, public peace and law and order situation was adversely affected by the illegal and indisciplined action of the petitioner associations. He has, therefore, submitted that in the larger public interest, the order passed by the competent authority which fulfills the requirement of law is not violative of any of the fundamental rights of the members of the State police force.

28.Mr.Trivedi has further submitted that the respondents have acted in accordance with the statutory provisions and rules framed thereunder and have not violated the principle of natural justice as alleged. He has further submitted that show cause notice was served upon each of the petitioner associations

through their office bearers. Replies to the said show cause notice on behalf of each of the petitioner associations was given through their office bearers. Personal hearing was afforded to the petitioner No.4 association on 7.2.1989, when Shri Govindbhai A. Dabhi, Police Constable and the President thereof appeared and got recorded a separate statement. Personal hearing was afforded to the petitioner No.3 association on 18.2.1989, when Shri Manubhai C. Bhatt, Police Head Constable and General Secretary and Treasurer of the said association appeared. Personal hearing was afforded to the petitioner No.2 association on 4.3.1989, when Shri P.R.Shah, Police Sub Inspector, and Shri B.H.Ramlavat, Police Sub Inspector, both being the office bearers of the said association appeared and gave their separate statements on behalf of the said association. Personal hearing was afforded to the petitioner No.1

association on 7.3.1989, when Shri S.V.Tehalramani, Police Inspector, and Vice-President of the said association appeared, whereas Shri A.G.Mistri, Police Inspector and office bearer just sent a telegram stating that he was unable to come but he did not want to say anything. He has, therefore, submitted that after giving the reasonable opportunity to the petitioner associations to show cause why their recognition should not be revoked and after providing personal hearing to the petitioner associations and after due consideration of their replies, representations etc, the respondent No.2 passed 4 different orders all dated 18.3.1989, reaching the conclusion that in the larger public interest and to maintain law and order in the state, it was necessary to revoke the recognition of the petitioner associations and hence an order revoking the recognition was made. He has,

therefore, submitted that merely because a few individual cases of prosecutions and/or disciplinary actions were subsequently withdrawn and/or settled in good faith, the same cannot be cited as precedent to invalidate the orders passed in the larger public interest revoking the recognition of the petitioner associations for maintaining law and order situation in the State. He has, therefore, submitted that the petition as well as the application deserves to be quashed and set aside.

29. Mr.Trivedi has further submitted that the nature of inquiry contemplated in this type of cases is neither judicial nor quasi-judicial, nor the disciplinary inquiry against the person sought to be dismissed. The inquiry in question is purely an administrative inquiry. In this kind of inquiry, the authority is to

arrive at the subjective decision and the order cannot be passed on the basis of objective satisfaction as envisaged in judicial and quasi-judicial inquiry. In order to find out as to whether or not there is subjective satisfaction, what is to be inquired is as to whether there is some material on record and decision is taken on the basis thereof. The adequacy of material cannot be made subject matter of such inquiry. He has further submitted that the proper and reasonable opportunities were granted to the petitioners and subjective satisfaction was reached. The Court is not supposed to sit as a Court of appeal to substitute the order passed by the competent authority.

30.In support of his submission he relied on the decision of the Hon'ble Supreme Court **in the case of Radeshyam Khare vs. The State of Madhya**

Pradesh, reported in AIR 1959 Supreme Court 107, wherein it is held that to say that action to be taken under S.53-A is an administrative action is not to say that the State Government has not to observe the ordinary rules of fair play. Reference to the observation made by Fortesque J in Dr.Bentley's case about God asking Adam and Eve whether they had eaten the forbidden fruit appearing in the judgment of Byles J in Cooper v. Wandsworth Board of Works (1863) 14 CB (NS) 180 : 143 ER 414 is apposite. The decision in the last mentioned case clearly establishes that in some cases it may be necessary to give an opportunity to a party to have his say before an administrative action is taken against him. But that is quite different from the well ordered procedure involving notice and opportunity of hearing necessary to be followed before a quasi-judicial action, open to correction by a superior court by means

of a writ of certiorari, can be taken. The difference lies in the manner and mode of the two procedures. For the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie.

31.Mr.Trivedi further relied on the decision of High Court of Calcutta, **in the case of M/s.Ondal Coal Co. vs. Sonepur Coal Fields Ltd., reported in AIR 1970 Culcutta 391**, wherein it is held that the statutory rule merely requires that the Board must give the applicant an 'opportunity of making representation against the order proposed.' It must therefore be held that the Board had no obligation to give the applicant an opportunity of appearing before the Board and to make oral arguments. But the applicant was entitled to a notice to show cause why the order to give the permission to the Ondal Co., should not be

made, before making the impugned order. That is the meaning that the Court has given expression 'opportunity to make representation' per se did not imply anything more than the opportunity to make a written representation.

32.Mr.Trivedi further relied on the decision of Hon'ble Supreme Court **in the case of Daman Singh and others vs. State of Punjab and others, reported in (1985) 2 Supreme Court Cases 670**, wherein it is held that in the absence of any provision, the rules of natural justice may be read into the provisions and notice to the members of the affected societies was imperative. Once a person becomes a member of a cooperative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the

society alone can act and speak for him qua rights or duties of the society as a body. So if the statute which authorises compulsory amalgamation of cooperative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its members. The Court further held that the notice to individual members of a cooperative society, is opposed to the very status of a cooperative society as a body corporate and is, therefore, unnecessary.

33.Mr.Trivedi further relied on the decision of Hon'ble Supreme Court **in the case of Joint Registrar of Co-operative Societies, Madras and others, vs. P.S.Rajagopal Naidu, Govindarajulu and others, reported in AIR 1970 Supreme Court 992**, wherein it is held that the High Court could not act as an appellate Court and

reappraise and re-examine the relevant facts and circumstances which led to the making of the orders of suspension as if the matter before it had been brought by way of appeal.

34. Mr.Trivedi further relied on the decision of the Orissa High Court **in the case of Durga Shankar Kar, vs. State of Orissa and others, reported in AIR 1982 Orissa 20**, wherein it is held that where the petitioner was given an opportunity of stating his objections to the charges mentioned in the notice of supersession and he has availed of that opportunity by filing his objections, a mere denial of opportunity of personal hearing to him during supersession proceedings could not vitiate the proceedings. The opportunity given to the petitioner to state his objections is sufficient compliance with the rules of natural justice.

35. Mr.Trivedi further relied on the decision of Hon'ble Supreme Court **in the case of S. Kapur Singh vs. Union of India, reported in AIR 1960 Supreme Court 493**, wherein it is held that by the Constitution, an opportunity of showing cause against the action proposed to be taken against a public servant is guaranteed and that opportunity must be a reasonable opportunity. Whether opportunity afforded to a public servant in a particular case is reasonable must depend upon the circumstances of that case. The enquiry in this case was held by the Enquiry Commissioner who occupied the high office of Chief Justice of the East Punjab High Court. The appellant himself examined 82 witnesses and produced a large body of documentary evidence and submitted an argumentative defence which covers 321 printed pages. An opportunity of making an oral representation not being in our

view a necessary postulate of an opportunity of showing cause within the meaning of Article 311 of the Constitution, the plea that the appellant was deprived of the constitutional protection of that Article because he was not given an oral hearing by the President cannot be sustained.

36. Mr.Trivedi further relied on the decision of Hon'ble Supreme Court **in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines and other vs. Ramjee, reported in (1977) 2 Supreme Court Cases 256**, wherein it is held that if the authority which takes the final decision acts mechanically and without applying its own mind, the order may be bad, but if the decision making body, after fair and independent consideration, reaches a conclusion which tallies with the recommendations of the subordinate authority

which held the preliminary enquiry, there is no error in law. Recommendations are not binding but are merely raw material for consideration. Where there is no surrender of judgment by the Board to the recommending Regional Inspector, there is no contravention of the canons of natural justice. The Court further held that natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Court should neither be finical nor fanatical but should be flexible yet firm in

this jurisdiction. No man shall be hit below the belt that is the conscience of the matter. The Court further held that the Court cannot look at law in the abstract or natural justice as a mere artifact. Nor can one fit into a rigid mould the concept of reasonable opportunity. Every miniscule violation does not spell illegality. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

37. Mr.Trivedi has further relied on the decision of Hon'ble Supreme Court **in the case of Carborundum Universal Ltd., vs. Central Board of Direct Taxes, reported in 1989 (2) Supreme Court Cases 462**, wherein the Court has held

that where a statutory provision does not exclude natural justice the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Exclusion, however, can either be by a clear provision or inferred from the scheme, as also the nature of power which is being exercised. The Court further held that there is no procedural statutory requirement of a hearing for the disposal of an application under Section 220(2-A) of the Act. Personal hearing in every situation is not necessary and there can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof. Keeping the nature of the power invoked for exercise, the fact that the petitioner had an opportunity to represent its case in wiring and the further fact that the Board had taken into consideration the

report of the Commissioner in the background that it is not allegation of the petitioner that the Commissioner's recommendations were different. The Court did not think in the facts of the case to hold that the petitioner was entitled to a right of being personally heard before its petition under Section 220(2-A) of the Act was disposed of as aforesaid.

38. Mr.Trivedi further relied on the decision **in the case of Krishan Yadav and another vs. State of Haryana and others, reported in AIR 1994 Supreme Court 2166**, wherein while rejecting the contention that innocent candidates should not be penalised for the misdeeds of others, the Court held that when the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as “Fraud unravels everything”. To put it in other words, the entire selection is arbitrary.

It is that which is faulted and not the individual candidates. Accordingly, selection of Taxation Inspectors was set aside by the Court.

39. Mr.Trivedi further relied on the decision of Hon'ble Supreme Court **in the case of Biswa Ranjan Sahoo & Ors. vs. Sushanta Kumar Dinda & Ors., reported in JT 1996(6) S.C. 515**, wherein the Hon'ble Supreme Court has held that in a case like mass mal-practice as noted by the Tribunal, as extracted in the judgment, the question emerges: whether the notice was required to be issued to the persons affected and whether they needed to be heard ? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who

are said to have been selected and given selection and appointment. The procedure adopted are in flagrant breach of the rules offending Articles 14 and 16 of the Constitution.

40.Mr.Trivedi further relied on the decision of Hon'ble Supreme Court **in the case of Apparel Export Promotion Council vs. A.K.Chopra, reported in (1999) 1 Supreme Court Cases 759**, for the proposition that the order passed by the respondent No.2 with regard to cancellation of recognition is just and proper and it cannot be interfered with by this Court while exercising its power under Article 226 of the Constitution of India. The Court has held in this case that what punishment was required to be imposed in the facts and circumstances of the case was the matter which falls exclusively within jurisdiction of the competent authority

and did not warrant any interference by the High Court.

41. Mr.Trivedi further relied on the decision of the Hon'ble Supreme Court **in the case of Gautambhai Devshankar Dave vs. State of Gujarat, reported in 2004(1) GLH 603**, wherein it is held that the law is settled that the powers conferred on the High Court under Articles 226 and 227 of the Constitution of India are extraordinary and discretionary as distinguished from ordinary statutory powers. This is not a case where this jurisdiction is required to be exercised in favour of the petitioners. There is no jurisdictional error in the order of the Tribunal. It is not a case where the Tribunal has assumed not conferred on its jurisdiction or where it has failed to exercise the jurisdiction vested in it. Nor is there any error apparent on the record of its

decision. The High Court does not sit as an appellate Court and interference with pure findings of fact and appreciation of evidence is not permissible. Reappreciation of evidence cannot be undertaken. Even if on same set of facts, circumstances and evidence on record, a different view may be possible, that by itself is not enough to permit the High Court to intervene. A mere wrong decision does not clothe the High Court with jurisdiction, unless it is shown that the Tribunal has reached a decision without any evidence in support of same, or that it has considered evidence which is partly relevant and partly irrelevant or that it arrived at a decision no reasonable person would have reached. None of the aforesaid factors exist in the present case so as to warrant any interference.

42. Mr.Trivedi further relied on the decision of

the Hon'ble Supreme Court **in the case of The State of Maharashtra vs. Babulal Kriparam Takkamore and others, reported in AIR 1967 Supreme Court 1353**, for the proposition that out of the several grounds if order is sustainable on one ground the Court should not interfere. The Hon'ble Supreme Court has held that the order of the State Government superseding the Nagpur Municipal Corporation was based on two grounds, one of which was relevant and the other irrelevant was valid. The fact that one of those grounds was irrelevant, did not affect the order inasmuch as the second ground showed that in the opinion of the State Government the ground was serious enough to warrant action under Section 408 (1) and was sufficient to establish that the Corporation was not competent to perform its duties under the Act.

43.Mr.Trivedi further relied on the decision of the Hon'ble Supreme Court **in the case of Delhi Police Non-Gazetted Karmchari Sangh and others vs. Union of India and others, reported in AIR 1987 Supreme Court 379**, wherein it is held that the the association of non-gazetted officers of police force which was given recognition previously and which was withdrawn after the enactment of (1970) Amendment Rules come within the ambit of Art.33. The provisions of the Act and rules taking away or abridging the freedom of association have been made strictly in conformity with Art.33. The right under Art.19(1)(c) is not absolute. Art.19(4) specifically empowers the State to make any law to fetter, abridge or abrogate any of the rights under Art.19(1)(c) in the interest of public order and other considerations. As members of the Police Force are at a less advantageous position, curtailment of their

rights under Art.19(1)(c) comes squarely within Art.33 in the interest of discipline and public order.

44. After having heard the learned advocates appearing for the respective parties and after having gone through the facts stated and averments made in the memo of petition alongwith the enclosures thereof, affidavit-in-reply, affidavit-in-rejoinder and other documents and papers produced on record and after having considered the relevant provisions contained in the Constitution of India, the Police Forces (Restriction of Rights) Act, 1966 and the authorities cited before the Court by the respective parties, the Court is of the view that the police force is special class by itself and the members of the police force are also entitled to the fundamental rights guaranteed under Part-III of the Constitution

of India. Article-19 of the Constitution protects certain rights regarding freedom of speech etc, of the citizen. Sub Clause (c) of Clause (1) of Article-19 says that all citizens shall have the right to form association or union. Clause (4) however states that nothing in Sub-Clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing in the interest of (the sovereignty and integrity of India or) public order or morality reasonable restrictions on the exercise of the right conferred by the said sub-clause. Article-33 of the Constitution empowers the Parliaments to modify fundamental rights conferred by this Part in their application to Forces etc. Sub-clause (b) of Article-33 states that the Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their

application to the members of the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Admittedly members of the police forces are charged with the maintenance of public order. In exercise of this power conferred in Article-33 of the Constitution, in the Army Act 1950, the Air Force Act, 1950 and the Navy Act, 1957 provision has been made for the restriction or abrogation of the rights conferred by Part III of the Constitution in their application to the members of the Armed Forces. No such provision has been made by Parliament by law in regard to the Forces charged with the maintenance of public order till 1966. It was felt necessary that in order to ensure the proper discharge of their duties and the maintenance of discipline among them the members of the Forces charged

with the maintenance of public order should not be allowed to form any trade union, labour union or any political association or to communicate with the Press or to publish anything except of purely literary, artistic or scientific character and should not be allowed to participate in or address any meeting or take part in any demonstration organised by any body of persons for any political purposes. To achieve these objects the Police Forces (Restriction of Rights) Bill was introduced in the Parliament and the Act was passed by the Parliament and it has received the assent of the President of India on 2nd December, 1966.

45. Looking to the objects and the constitution of all the four petitioner associations, recognition was granted in August, 1979 by the Inspector General of Police. Subsequently having found their agitational mood and growing

indiscipline among them the recognition was suspended for the period of 3 months which was extended for further period of 3 months. The allegations were made that the members of the petitioner associations were acting contrary to the objects for which the associations were formed and the conditions on the basis of which such recognitions were granted. Even the objects of the Act, namely, Police Forces (Restriction of Rights) Act, 1966 are very clear. The Act was brought into force only with a view to see that they should not be allowed to form any trade union, labour union or any political association or to communicate with the Press or to publish anything except of purely literary, artistic or scientific character and should not be allowed to participate in or address any meeting or take part in any demonstration organised by any body of persons for any political purposes. If one

look at the allegations which have been made against the members of the petitioner associations, they are inter alia, to the effect that Instigating the members of police force not to fill their option forms, slogan shouting in the office compound of the Commissioner of Police, threatening to boycott salaries, releasing press statements which were likely to cause disaffection amongst the members of the police force towards the Government, expressing support to the agitation by Nurses, resorting to stage Dharna in front of the residence of the then Chief Minister, declaring complete support to the agitation by the Gujarat Rajya Revenue Karmachari Mahamandal, deciding to go on strike on Ratha Yatra day on 15.7.1988 if demands of police union were not met, threatening to give call for strike if the pay scales of wireless staff were not revised as per their demand, giving

false and highly distorted version of the incident relating to the background of the police strike in July, 1988 and instigating substantial number of police force at various parts of the State to proceed on illegal strike from 24.7.1988 to 29.7.1988, which compelled the authorities to deploy para-military forces and the army to maintain law and order situation in the State. All these allegations are certainly not befitting to the Police Personnel and keeping this thing in mind, actions were taken by the respondent authorities and after issuing show cause notice, inviting objections from them and affording reasonable opportunity of being heard, the recognitions were withdrawn.

46. The other grievance of the petitioner associations was that the inquiry was not conducted in lawful manner and reasonable

opportunities were not given to the petitioner associations. Decision of withdrawing the recognition was taken absolutely in violation of principle of natural justice. From the various decisions cited before the Court, it appears that the nature of the inquiry contemplated in such proceedings is not that of the inquiry as envisaged either by judicial, quasi judicial or departmental proceedings. This inquiry is of administrative nature and subjective satisfaction of the Inquiry Officer is required to be arrived at. The Court does not find any substance in the argument that the impugned order of withdrawing recognition is violative of principle of natural justice, as the issuance of show cause notice per se does not imply anything more than the opportunity to offer an explanation or to make the written representation. Mere denial of personal hearing could not vitiate the proceeding.

Here in the present case it becomes clear that the show cause notices were issued, explanations were called for, even personal hearing was also granted to Office Bearers of different associations and thereafter the order of withdrawal of recognition was passed. Hence there was no infirmity in the inquiry proceedings and order of withdrawal of resignation cannot be said to have been passed in violation of principles of natural justice.

47. Even otherwise, the withdrawal order was passed in the year 1989. More than 16 years have passed. No useful purpose would be served in cancelling such orders, especially when no valid ground is shown to warrant any interference by this Court. For the last more than 16 years, there is no recognised association, so far as all the four petitioner associations are concerned. It has also come

on record that the respondent authorities have taken adequate care in safeguarding the interest of members of the petitioner associations. The whole issue was raised with regard to implementation of 4th Pay Commission. The members of the Police Forces are paid more than the 4th Pay Commission. Alternative forum for the State Police Personnel to seek redressels, committees at the District level and State level were formed. The Court is, therefore, of the view that there is no infirmity in the order passed by the respondent authorities while withdrawing the recognition of the petitioner associations.

48. As far as Civil Application is concerned, limited prayer is made therein seeking permission to hold the meeting and to pass appropriate resolution for filing the fresh application for recognition. The petitioner

associations have filed applications before the authorities for seeking such permission and the same have not been granted by the respondent authorities. Hence this application was filed during the pendency of this petition. Rejection of said application gives a separate cause of action and the petitioner should have filed a substantive petition raising grievance before the Court. However, since the Court has passed an order earlier keeping this Civil Application alongwith the main petition, the Court is not rejecting this application on this ground. The Court is of the view that the recognition once withdrawn is not withdrawn for ever. Under given circumstances, if the authorities have found that the recognition should not be continued, the same may be withdrawn on certain justifiable reasons. However, such withdrawal would not disentitle the Police Force to seek recognition afresh under changed circumstances.

Even otherwise, for holding the meeting or passing necessary resolution, no permission is required. However, if the members or certain individual persons are apprehending some actions against them if such meetings are called or some resolutions are moved, in that case by way of abundant caution such permission may be sought for. The Court is of the view that the respondents are not justified in rejecting such applications. Mere granting of permission to hold meeting and passing of resolution to apply for recognition would not amount to granting of recognition. It is well within the right of the respondent authorities either to grant or to reject the application for granting recognition. The application will have to be decided on its own merits without there being any shadow of past history. If the forming of associations and granting of recognition matches with the avowd objects of

the Act which have been enumerated above, the authority should consider it in the proper perspective. The right to form an association is a fundamental right. It can be abridged or abrogated. It cannot be totally curtailed for ever. Refusal to grant permission to hold meeting or to pass resolution would amount to total curtailment of this right for ever, which could never be the intention of the Parliament. The Court, therefore, directs the petitioner associations or any member or members thereof, if they so desire, to move such applications afresh setting out the necessary objects and agendas and if such application is moved, the same shall be considered in light of the above observations and in accordance with law. Liberty is reserved for the petitioner associations to approach this Court by way of substantive petition if their applications for holding meetings or passing necessary

resolutions are not found favour of the respondent authorities. It is made clear that granting such permission will not amount to granting recognition.

49. Subject to the aforesaid directions and observations, Special Civil Application No.432 of 1989 is dismissed. Rule is discharged. Civil Application No.9810 of 2001 is allowed to the above extent without any order as to costs.

(K. A. PUJ, J.)

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